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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,112	04/01/2004	Shahid Shoaib	6655P041C	2834

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EXAMINER

IQBAL, NADEEM

ART UNIT PAPER NUMBER

2114

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/817,112

Applicant(s)

SHOAIB ET AL.

Examiner

Nadeem Iqbal

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 2-18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,19-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

This application is a continuation of application No. 10/243083 filed Sep. 13, 2002. Claim 1 is amended, Claims 2-18 is canceled, and new claims 19-34 are added.

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1, 19-34 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6745339. This is a double patenting rejection.

3. As per claim 1 of present application teaches limitations pertain to a method comprising: evaluating at least one measured wait time associated with at least one user interface event in relation to a desired level of fault tolerance associated with an application executing in a system. This limitation is taught in claim 1 of the cited patent at col. 13, lines 62-65. Limitations pertain to dynamically selecting use of one of a plurality of fault tolerance schemes to improve user perceived performance of the system is taught by the cited patent at col. 14, lines 11-14.

4. As per claim 19, Limitations pertain to dynamically selecting use of the one fault tolerant schemeto each other is taught in claim 1 of the cited patent at col. 14, lines 6-9.

5. As per claim 20, Limitations pertain to comparing the at least one measured wait time to a predetermined threshold is taught in claim 3.

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6. As per claim 21, Limitations pertain to comparing the at least one measured wait time comprises comparing a mean of the at least one measured wait time to a wait time threshold is taught in claim 4.
7. As per claim 23, Limitations pertain to wait time threshold is taught in claim 3.
8. As per claim 24, Limitations pertain to wait time threshold is taught in claim 4.
9. As per claim 25, Limitations pertain to measured wait time is taught in claim 1, col. 13, lines 63-65.
10. As per claim 26, Limitations pertain to system is a distributed system is taught in claim 1, col. 13, lines 59-60.
11. As per claims 27 & 30, Limitations pertain to evaluating at least one measured wait timein a system is taught in claim 15, col. 15, lines 21-23. Limitations pertain to dynamically selecting use of oneof the system is taught in claim 15, col. 16, lines 1-5.
12. As per claim 28, Limitations pertain to dynamically selecting use of the other fault tolerant scheme is based on improving one of morewith respect to each other is taught in claim 15, col. 15, lines 34-37.
13. As per claim 29, Limitations pertain to one measured wait time comprises one of communication time, service time and a fault tolerance time is taught in claim 15, col. 15, lines 21-23.
14. As per claim 31, Limitations pertain to determining a mean of at least one measured wait time comprises one of communication time, service time and a fault tolerance time is taught in claim 15, col. 15, lines 25-27.
15. As per claims 32 & 33, Cited patent claims 1 & 15 teach the limitations in these claims.

16. As per claim 34, Cited patent claim 34 teaches the limitations in this claims.

Claim Rejections - 35 USC § 102

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

18. Claims 1, 19, 20, 25-34 are rejected under 35 U.S.C. 102(e) as being anticipated by D'Souza (U.S. Patent number 6446218).

19. As per claims 1, 31 & 32, D'Souza teaches (col. 7, lines 27-30) ascertaining a fault tolerance level associated with the software program, with the ascertaining being ascertained by examining the status of the software modules running on the first plurality of computers, and determining if the fault tolerance level is below a predefined acceptable fault tolerance level. He also teaches (col. 7, lines 38-42) that if the first suitable computer is available, the method further includes loading the another module of the software program on the first suitable computer.

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20. As per claim 19, He teaches (col. 7, lines 45-46) routing the transaction requests pertaining to the software program, to the first suitable computer after the registering. He thus teaches limitations pertain to dynamically selecting use of the one fault tolerant scheme.

21. As per claim 20, He teaches (col. 7, lines 30-32) that if the fault tolerance level is below the predefined acceptable fault tolerance level, the method also includes searching for a first suitable computer among the first plurality of computers to load another module of the software program.

22. As per claim 25, D'Souza teaches (col. 7, lines 27-30) ascertaining a fault tolerance level associated with the software program, with the ascertaining being ascertained by examining the status of the software modules running on the first plurality of computers, and determining if the fault tolerance level is below a predefined acceptable fault tolerance level.

23. As per claim 26, He teaches (col. 7, lines 1-4) a software program implementation on computers of a cluster in a clustered computer system.

24. As per claims 27, 30 & 33, D'Souza teaches (col. 7, lines 27-30) ascertaining a fault tolerance level associated with the software program, with the ascertaining being ascertained by examining the status of the software modules running on the first plurality of computers, and determining if the fault tolerance level is below a predefined acceptable fault tolerance level. He also teaches (col. 7, lines 38-42) that if the first suitable computer is available, the method further includes loading the another module of the software program on the first suitable computer.

25. As per claim 28, He teaches (col. 7, lines 45-46) routing the transaction requests pertaining to the software program, to the first suitable computer after the registering. He thus teaches limitations pertain to dynamically selecting use of the one fault tolerant scheme.

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26. As per claim 29, D'Souza teaches (col. 7, lines 27-30) ascertaining a fault tolerance level associated with the software program, with the ascertaining being ascertained by examining the status of the software modules running on the first plurality of computers, and determining if the fault tolerance level is below a predefined acceptable fault tolerance level.

Allowable Subject Matter

27. Claim 34 is allowed.

28. Claims 21-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

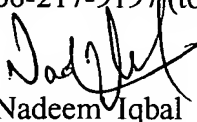
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nadeem Iqbal whose telephone number is (571)-272-3659. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Baderman Scott can be reached on (571)-272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nadeem Iqbal
Primary Examiner
Art Unit 2114

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